

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

05: 10911 RWZ

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:
:

Civil Action No. 04-0348 (JR)

MAGISTRATE JUDGE Alexander

ORDER

Pursuant to 28 USC § 1404(a), it is **ORDERED** that this case be transferred to the District of Massachusetts. Because this transfer is by consent, there is no reason to delay it, and the transfer shall be done forthwith.

JAMES ROBERTSON
United States District Judge

CLOSED

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:04-cv-00348-JR

SAMPSON v. ELI LILLY AND COMPANY Date Filed: 03/03/2004
Assigned to: Judge James Robertson Jury Demand: Plaintiff
Demand: \$2000000 Nature of Suit: 365 Personal
Cause: 28:1332 Diversity-Product Liability Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

LISA SAMPSON

represented by **Aaron M. Levine**
AARON M. LEVINE &
ASSOCIATES, P.A.
1320 19th Street, NW
Suite 500
Washington, DC 20036
(202) 833-8040
Fax: (202) 833-8046
Email:
aaronlevinelaw@aol.com
LEAD ATTORNEY
ATTORNEY TO BE
NOTICED

Brandon J. Levine
AARON M. LEVINE &
ASSOCIATES
1320 19th Street, NW
Suite 500
Washington, DC 20036
(202) 833-8040
Fax: (202) 833-8046
Email: levbran@aol.com

*LEAD ATTORNEY
ATTORNEY TO BE
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Steven Jay Lewis
AARON M. LEVINE &
ASSOCIATES
1320 19th Street, NW
Suite 500
Washington, DC 20036
(202) 833-8040
Fax: (202) 833-8046
Email:
slewis@aaronlevinelaw.com
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

V.

Defendant

**ELI LILLY AND
COMPANY**

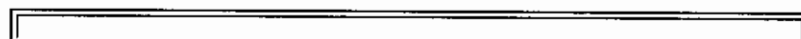
represented by **James J. Dillon**
FOLEY HOAG, LLP
155 Seaport Boulevard
Boston, MA 02210-2600
(617) 832-1000
Fax: (617) 832-7000
Email:
jdillon@foleyhoag.com
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

Lawrence Hedrick Martin
FOLEY HOAG LLP
1875 K Street, NW
Washington, DC 20006

(202) 223-1200
 Fax: (202) 785-6687
 Email:
 lmartin@foleyhoag.com
 LEAD ATTORNEY
 ATTORNEY TO BE
 NOTICED

Date Filed	#	Docket Text
03/03/2004	<u>1</u>	NOTICE OF REMOVAL from Superior Court for the District of Columbia, case number 04ca0000707. (Filing fee \$ 150) (Attachments: # <u>1</u> Exhibit)(bcs,) (Entered: 03/05/2004)
03/03/2004	<u>2</u>	LCvR 7.1 - CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by ELI LILLY AND COMPANY. (bcs,) (Entered: 03/05/2004)
03/03/2004	<u>3</u>	ANSWER to <u>1</u> Complaint by ELI LILLY AND COMPANY.(bcs,) (Entered: 03/05/2004)
03/03/2004		SUMMONS Not Issued (bcs,) (Entered: 03/05/2004)
03/05/2004	<u>4</u>	NOTICE of Appearance by Aaron M. Levine on behalf of LISA SAMPSON (Levine, Aaron) (Entered: 03/05/2004)
03/24/2004	<u>5</u>	Original file, certified copy of transfer order and docket sheet received from DC Superior 04ca707. (bcs,) Additional attachment(s) added on 3/29/2004 (bcs,). (Entered: 03/29/2004)
05/21/2004	<u>6</u>	ENTERED IN ERROR.....AFFIDAVIT OF SERVICE by LISA SAMPSON. (Attachments: # <u>1</u> Appendix Postal Certification)(Levine, Aaron) Modified on 5/24/2004 (bcs,). (Entered: 05/21/2004)
05/24/2004		"NOTICE OF CORRECTED DOCKET ENTRY.

		Document No. 6 was entered in error and counsel is instructed to re-file the affidavit of service as a return of service." (bcs,) (Entered: 05/24/2004)
05/25/2004	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. ELI LILLY AND COMPANY served on 2/12/2004, answer due 3/3/2004 (Attachments: # <u>1</u> Appendix Postal Certification)(Levine, Aaron) (Entered: 05/25/2004)
12/22/2004	<u>8</u>	ORDER that the parties file a status report no later than 30 days from the date of this order. Signed by Judge James Robertson on December 22, 2004. (MT) (Entered: 12/22/2004)
01/18/2005	<u>9</u>	STATUS REPORT <i>Joint Meet and Confer and Status Report</i> by LISA SAMPSON. (Attachments: # <u>1</u> Text of Proposed Order Proposed Scheduling Order) (Levine, Aaron) (Entered: 01/18/2005)
02/18/2005	<u>10</u>	SCHEDULING ORDER: final pretrial conference is set for November 3, 2005 at 4:30 p.m. and trial will commence on November 14, 2005 at 9:30 a.m. Signed by Judge James Robertson on February 18, 2005. (MT) (Entered: 02/18/2005)
05/02/2005	<u>11</u>	Consent MOTION to Transfer Case by ELI LILLY AND COMPANY. (Dillon, James) (Entered: 05/02/2005)
05/05/2005	<u>12</u>	ORDER granting defendant's consented motion to transfer case <u>11</u> to the District of Massachusetts forthwith . Signed by Judge James Robertson on May 5, 2005. (MT) (Entered: 05/05/2005)
05/05/2005		Case transferred to District of Massachusetts. Information sent electronically. (lc,) (Entered: 05/05/2005)



PACER Service Center			
Transaction Receipt			
05/09/2005 10:53:34			
PACER Login:	us2510	Client Code:	
Description:	Docket Report	Search Criteria:	1:04-cv-00348-JR
Billable Pages:	2	Cost:	0.16

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff,

v.

ELI LILLY AND COMPANY,
Lilly Corporation Center
Indianapolis, IN 46285
w/s/o NATIONAL REGISTERED AGENTS, INC.
1090 Vermont Avenue, N.W., Suite 910
Washington, DC 20005

Defendant.

CIVIL ACTION No.

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1446, defendant Eli Lilly and Company (“Lilly”) files this Notice of Removal and states:

1. Lilly is the defendant in an action commenced against it by the plaintiff, Lisa Sampson, pending in Superior Court for the District of Columbia, captioned Lisa Sampson v. Eli Lilly and Company, Civil Action No. 04-0000707 (the “Superior Court action”). True copies of all process, pleadings and orders served on Lilly in the state action are attached hereto as Exhibit A and specifically incorporated herein.

2. In her Complaint, Plaintiff Lisa Sampson alleges that she is a resident of Weymouth, MA. Defendant Lilly is a corporation organized under the laws of the State of Indiana with a principal place of business in Indianapolis, Indiana. There is, therefore, complete diversity of citizenship.

3. The Plaintiff claims damages in excess of \$75,000. Accordingly, the matter in controversy in the state action exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. Lilly was served with a summons and a copy of plaintiff's Complaint and Demand for Jury Trial on February 12, 2004. Consequently, this notice is timely under 28 U.S.C. §1446(b).

5. This action is one of which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and that may be removed to this Court by Lilly.

ELI LILLY AND COMPANY
By its attorneys:

/s/ Lawrence H. Martin
Lawrence H. Martin, D.C. Bar #476639
FOLEY HOAG LLP
1875 K Street, NW, Suite 800
Washington, D.C. 20006-1238
(202) 223-1200

and

James J. Dillon
Foley Hoag LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2600
(617) 832-1000

Dated: March 3, 2004

CERTIFICATE OF SERVICE

I, Lawrence H. Martin certify that a true copy of the foregoing Notice of Removal was served on March 3, 2004, by U.S. First Class Mail, postage prepaid to:

Aaron M. Levine, Esq.
Aaron M. Levine and Associates, P.A.
1320 19th Street, NW, Suite 500
Washington, DC 20036
Attorney for Plaintiff

/s/ Lawrence H. Martin
Lawrence H. Martin

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff,

v.

ELI LILLY AND COMPANY,
Lilly Corporation Center
Indianapolis, IN 46285
w/s/o NATIONAL REGISTERED AGENTS, INC.
1090 Vermont Avenue, N.W., Suite 910
Washington, DC 20005

Defendant.

CIVIL ACTION No.

NOTICE OF FILING CERTIFIED COPIES OF STATE COURT PAPERS

Pursuant to 28 U.S.C. § 1446, defendant hereby files certified copies of all records and proceedings in the Superior Court action (Superior Court for the District of Columbia Civil Action No. 04-0000707).

ELI LILLY AND COMPANY
By its attorneys:

/s/ Lawrence H. Martin
Lawrence H. Martin, D.C. Bar #476639
FOLEY HOAG LLP
1875 K Street, NW, Suite 800
Washington, D.C. 20006-1238
(202) 223-1200

and

James J. Dillon
Foley Hoag LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2600
(617) 832-1000

Dated: March 3, 2004

CERTIFICATE OF SERVICE

I certify that a true copy of the Notice of Filing Certified State Court Papers was served on March 3, 2004 by U.S. First Class Mail, postage prepaid, to:

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 19th Street, N.W., Suite 500
Washington, DC 20036
Attorney for Plaintiff

/s/ Lawrence H. Martin

Lawrence H. Martin

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

04ca000707 DOCKET

AS OF 2/25/04

EP2003

CAPTION: Sampson, L. vs Eli Lilly and Co
 ASSIGNED JUDGE Melvin R. Wright

USER:Wiggins, Vondell
 DEPT:CivClk

FILED/
 EVENT

PARTIES/
 ENTRIES

DOCKETED

P001 Lisa Sampson

P001A Aaron M. Levine, Esq.
 1320 19th St., N.W.
 Suite 500
 Washington, D.C.
 20036

bar#007864

VS

D001 Eli Lilly & Co

D001 (Pro se)
 1090 Vermont Ave NW
 #910
 Wash DC
 20005

01/30/04 Complaint for Personal injury

01/30/04

02/05/04 Continued to 040507ss @ 9:30am from 040430ss - Judge/Court 02/05/04
 room not available
 FSDATE:
 LDATE: 040430ss cnj

04/30/04 (rst) Initial SCHEDULING conference @ 9:30am
 FSDATE: 040430ss
 NSDATE: 040507ss cnj

01/30/04

05/07/04 SCHEDULING conference @ 9:30am
 FSDATE:
 LDATE: 040430ss cnj¼

-SCDC-ss

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

04ca000707 DOCKET

AS OF 2/25/04

EP2003

CAPTION: Sampson, L. vs Eli Lilly and Co
ASSIGNED JUDGE Melvin R. Wright

USER:Wiggins, Vondell
DEPT:CivClk

Codes Embedded in Docket Entries

(cns) - cancelled by consolidation
(den) - denied
(fin) - final disposition
(jsd) - cancelled by disposition
(gra) - granted
(hrq) - hearing
(mot) - motion opposition due
(ord) - order
(opp) - opposition to motion
(prt) - partial disposition
(rej) - rejected
(rst) - rescheduled
(wdr) - withdrawn

(cml) - Captioned case is the lead case in consolidated group
(case#) - Captioned case is subsidiary to (lead case)
FSDATE: - first scheduled date
NSDATE: - next scheduled date
LSDATE: - last scheduled date
INTRATE - interest rate
INTDATE - interest as of date

Superior Court of the District of Columbia

2/06/04

500 Indiana Ave N.W
Washington, D.C. 20001

529

The civil action case captioned at the
right has been RESCHEDULED for a
SETTLEMENT/SCHEDULING conference
before Civil Calendar #13
Judge Wright
for the date and time shown.

CASE NUMBER: 04ca000707
Sampson, L. vs Eli Lilly and Co

HEARING DATE: 5/07/04 TIME: 9:30am

TO:

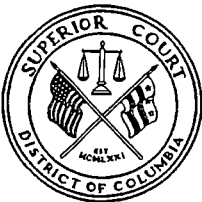
04ca000707 D001 PRU.0298b2M
Eli Lilly & Co
1090 Vermont Ave NW
#910
Wash DC
20005

PLEASE REPORT TO:

COURTROOM #118 1st Floor
500 Indiana Ave, NW

Civil Assignment Office, Phone: (202) 879-1696

PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.



D.C. Superior Court
500 Indiana Ave N.W.
Washington D.C. 20001

First class Mail
U.S. Postage
Paid
Washington, D.C.
Permit No. 1726

04ca000707 D001 PRU.0298b2M 529
Eli Lilly & Co
1090 Vermont Ave NW
#910
Wash DC
20005

2/06/04 ca JM-130

Superior Court of the District of Columbia

2/06/04

500 Indiana Ave N.W
Washington, D.C. 20001

530

The civil action case captioned at the right has been RESCHEDULED for a SETTLEMENT/SCHEDULING conference before Civil Calendar #13 Judge Wright for the date and time shown.

CASE NUMBER: 04ca000707
Sampson, L. vs Eli Lilly and Co

HEARING DATE: 5/07/04 TIME: 9:30am

TO:

04ca000707 P001A PRU.0298b2M
Aaron M. Levine, Esq.
1320 19th St., N.W.
Suite 500
Washington, D.C.
20036

PLEASE REPORT TO:

COURTROOM #118 1st Floor
500 Indiana Ave, NW

Civil Assignment Office, Phone: (202) 879-1696

PLEASE BRING THIS NOTICE WITH YOU WHEN YOU APPEAR.

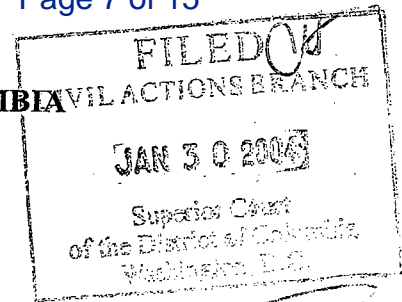


D.C. Superior Court
500 Indiana Ave N.W.
Washington D.C. 20001

First class Mail
U.S. Postage
Paid
Washington, D.C.
Permit No. 1726

04ca000707 P001A PRU.0298b2M 530
Aaron M. Levine, Esq.
1320 19th St., N.W.
Suite 500
Washington, D.C.
20036

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
Civil Division



LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff,

v.

ELI LILLY AND COMPANY
Lilly Corporate Center
Indianapolis, IN 46285
w/s/o NATIONAL REGISTERED AGENTS, INC.
1090 Vermont Avenue, NW, #910
Washington, DC 20005

Defendant.

Civil Action No. 04-0000707

COMPLAINT

(DES Litigation – Products Liability, Punitive Damages)

1. Jurisdiction is founded upon 11 D.C. Code §921 (1981 ed.).
2. Defendant is engaged, or has been engaged, in the manufacturing, marketing, sale, promotion, and distribution of pharmaceuticals throughout the United States, and is doing business in the District of Columbia. The Defendant met with and conspired with numerous pharmaceutical manufacturers in the District of Columbia, prior to obtaining governmental approval for Diethylstilbestrol (“DES”). Defendant spearheaded industry-wide conferences in the District of Columbia to seek approval of DES by Joint Submission, withholding from the Food and Drug Administration reports questioning the efficacy of DES and studies raising serious questions of safety. These meetings, conferences and agreements occurred in the District of Columbia.

COUNT I

(Negligence)

3. On or about 1964 and 1965, during her pregnancy with Lisa Sampson, the mother of the Plaintiff herein bought and ingested DES in Massachusetts. Her physician prescribed said

drug during the pregnancy. The drug was manufactured and sold by Defendant Eli Lilly and Company.

4. As a result of Plaintiff's embryonic exposure to DES, she suffered injuries including, but not limited to, uterine and cervical malformations with resulting infertility, miscarriage, and incurred medical expenses for care and treatment and suffered physical and mental pain.

5. Said injuries were the result of the negligence of Defendant, including, but not limited to, failure to test, failure to warn, over-promotion of DES, and failure to heed and report adverse studies regarding the safety and efficacy of DES.

COUNT II
(Strict Liability)

6. All of the allegations contained in Count I are realleged and incorporated herein by reference.

7. DES is, and at all times relevant to this action was, an unreasonably dangerous and defective drug when used by pregnant women for its advertised and intended purpose as a preventative of miscarriage.

8. Defendant is engaged, or has been engaged, in the business of producing DES, and are, or have been, a commercial manufacturer of said drug.

9. Plaintiff's mother purchased and ingested DES during her pregnancy with Plaintiff, and received and ingested DES in the same form and condition as when it left Defendant's possession.

10. Said product was defective when placed on the market by Defendant. DES was sold by Defendant without sufficient warning or instructions. A reasonable seller would not have sold the product had he/she known of the risks involved. The risks were greater than a reasonable buyer would expect.

11. Defendant knew, or should have known, that pregnant women and their attending physicians could not realize and could not detect the dangerous and harmful nature of DES. Clear warnings as to the doubtful efficacy of DES and dangers to unborn children should have been disseminated to overcome Defendant's extensive advertising campaigns proclaiming the safety and efficacy of DES.

12. As a result of Defendant's marketing and promotion of said defective and unreasonably dangerous drug, Plaintiff was exposed to DES as an unborn child and has suffered injury, loss, and damages as aforesaid.

13. By reason of having marketed and promoted DES in its defective and unreasonably dangerous condition, Defendant is strictly liable to Plaintiff for her DES-related injuries, losses, and damages.

COUNT III
(Breach of Warranty)

14. All of the allegations contained in Counts I and II are realleged and incorporated herein by reference.

15. At all times relevant to this action, Defendant marketed and promoted DES accompanied by implied and express warranties and representations to physicians and their patients that the drug was efficacious as a miscarriage preventative, and was safe for pregnant women and their unborn children if used as directed for such purposes.

16. Defendant knew, or should have known, that pregnant women, including the mother of Plaintiff and her attending physicians, were relying on Defendant's skills and judgments, and the implied and express warranties and representations.

17. At all times relevant to this action, these implied and express warranties and representatives were false, misleading, and unfounded. In fact, DES was a misbranded drug in violation of federal law, and was neither safe nor efficacious as a miscarriage preventative.

18. As a direct result of the breach of warranties by the Defendant, Plaintiff has been injured as aforesaid.

COUNT IV
(Misrepresentation)

19. All of the allegations contained in Counts I, II, and III are realleged and incorporated herein by reference.

20. Defendant represented to pregnant women, including the mother of Plaintiff and her attending physicians, in promotion campaigns, advertisements, labeling, and literature that DES was safe, effective, and adequately tested, which representations were made and publicized with the purpose and intent of having physicians and their patients rely on them.

21. The mother of the Plaintiff and her attending physicians did, in fact, rely on Defendant's representations in his advice about purchase, use, and consumption of DES.

22. At all times relevant to this action, these representations were known to Defendant to be false or they were made by Defendant in conscious, reckless and/or unreasonable disregard of facts available to Defendant, indicating a lack of efficacy and a danger to pregnant women and their unborn children.

23. As a direct result of said false representations by Defendant, Plaintiff was injured as aforesaid.

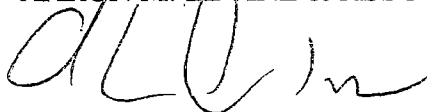
COUNT V
(Punitive Damages)

24. The acts of the Defendant were gross, wanton and intentional in that Defendant, at the time of Plaintiff's exposure, had actual and constructive notice that DES crossed the placental barrier and adversely affected and stunted the morphology and embryologic development of the exposed female fetus. Additionally, the Defendant knew or should have known that DES was ineffective, of no use and provided no benefit to the pregnant mother.

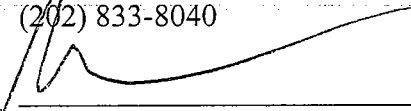
Nonetheless, the Defendant knowingly and intentionally promoted DES for use in pregnancy as safe and effective to prevent the threat of miscarriage disregarding the published literature that warned of the risks and criticized its efficacy. The Defendant intentionally, maliciously and wantonly promoted DES for use in maintaining pregnancy as the most "effective" therapy to prevent miscarriage and even recommended its use prophylactically even where no symptoms or signs of a threatened miscarriage appeared. Additionally, the Defendant fraudulently deceived the Food and Drug Administration and the obstetrical profession and Plaintiff by knowingly and intentionally withholding adverse literature and studies and submitting only favorable reports, which it knew originated in erroneous studies with incompetent investigators using poorly designed test methods.

WHEREFORE, Plaintiff Lisa Sampson, demands judgment against Defendant in the sum of Two Million Dollars (\$2,000,000.00), as compensatory damages and the sum of Two Million Dollars (\$2,000,000.00) as punitive damages, plus costs.

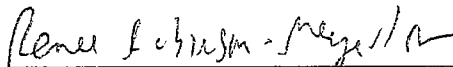
Respectfully submitted,
AARON M. LEVINE & ASSOCIATES



Aaron M. Levine, #7864
1320 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 833-8040



Brandon J. Levine, #412130



Renee L. Robinson-Meyer, #455375



Steven J. Lewis, #472564

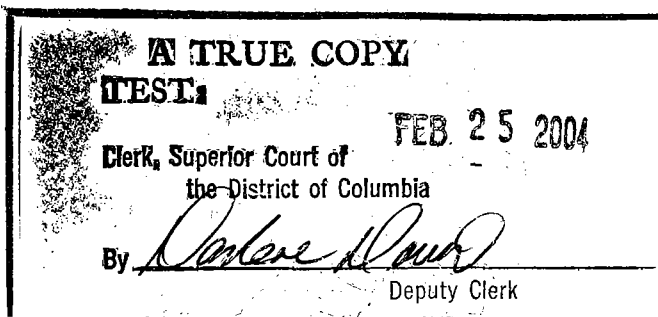
Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury as to all issues of material facts.



Aaron M. Levine



CA Form 1

Superior Court of the District of Columbia

CIVIL DIVISION

500 Indiana Avenue, N.W., Room JM-170
Washington, D.C. 20001 Telephone: 879-1133

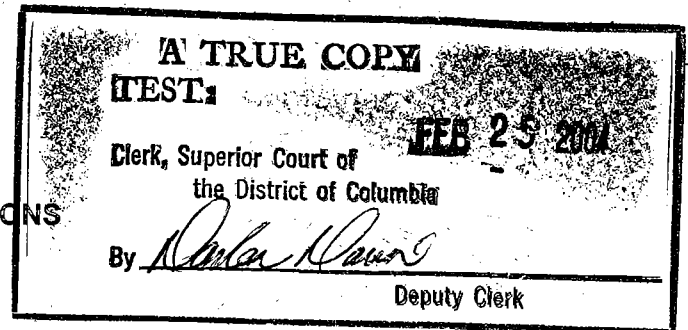
LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff

vs.
ELI LILLY AND COMPANY
w/s/o NATIONAL REGISTERED AGENTS,
INC. *Defendant*
1090 Vermont Avenue, N.W., #910
Washington, DC 20005

Civil Action No. 04-0000707

SUMMONS



To the above named Defendant:

You are hereby summoned and required to serve an Answer to the attached Complaint, either personally or through an attorney, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you are being sued as an officer or agency of the United States Government or the District of Columbia Government, you have sixty (60) days after service of this summons to serve your Answer. A copy of the Answer must be mailed to the attorney for the party plaintiff who is suing you. The attorney's name and address appear below. If plaintiff has no attorney, a copy of the Answer must be mailed to the plaintiff at the address stated on this Summons.

You are also required to file the original Answer with the Court in Room JM 170 at 500 Indiana Avenue, N.W., between 8:30 a.m. and 5:00 p.m., Mondays through Fridays or between 9:00 a.m. and 12:00 noon on Saturdays. You may file the original Answer with the Court either before you serve a copy of the Answer on the plaintiff or within five (5) days after you have served the plaintiff. If you fail to file an Answer, judgment by default may be entered against you for the relief demanded in the complaint.

Clerk of the Court

Aaron M. Levine, Esq.

Name of Plaintiff's Attorney
1320 19th Street, N.W., Suite 500

Washington, DC 20036
Address

(202) 833-8040

Telephone

By *[Signature]*

Deputy Clerk

Date 1-30-04

PUEDE OBTENERSE COPIAS DE ESTE FORMULARIO EN ESPANOL EN EL TRIBUNAL SUPERIOR DEL DISTRITO DE COLUMBIA, 500 INDIANA AVENUE, N.W., SALA JM 170

YOU MAY OBTAIN A COPY OF THIS FORM IN SPANISH AT THE SUPERIOR COURT OF D.C., 500 INDIANA AVENUE, N.W., ROOM JM 170

NOTE: SEE IMPORTANT INFORMATION ON BACK OF THIS FORM.

Superior Court of the District of Columbia

CIVIL DIVISION – CIVIL ACTIONS BRANCH

INFORMATION SHEET

LISA SAMPSON

vs.

ELI LILLY AND COMPANY

Case Number:

05-0000702

Date: 1/29/04

Name:

Aaron M. Levine, Esq.

Firm Name:

Aaron M. Levine and Associates

Telephone No.:

(202) 833-8040

Unified Bar No.:

7864

Relationship to Lawsuit

☒ Attorney for Plaintiff☐ Self (Pro Se)

Other:

TYPE OF CASE: ☐ Non-Jury ☒ 6 Person Jury☐ 12 Person Jury.

Demand: \$ 4,000,000.00

Other:

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.

Judge

Calendar #

Case No.

Judge

Calendar #

NATURE OF SUIT: (Check One Box Only)

A. CONTRACTS

- ☐ 01 Breach of Contract ☐ 07 Personal Property
☐ 02 Breach of Warranty ☐ 09 Real Property-Real Estate
☐ 06 Negotiable Instrument ☐ 12 Specific Performance
☐ 15 Other:

COLLECTION CASES

- ☐ 14 Under \$25,000 Pltf. Grants Consent
☐ 16 Under \$25,000 Consent Denied
☐ 17 OVER \$25,000

B. PROPERTY TORTS

- ☐ 01 Automobile ☐ 03 Destruction of Private Property ☐ 05 Trespass
☐ 02 Conversion ☐ 04 Property Damage ☐ 06 Other:
☐ 07 Shoplifting, D.C. Code § 3441

C. PERSONAL TORTS

- ☐ 01 Abuse of Process ☐ 09 Harassment ☒ 17 Personal Injury
☐ 02 Alienation of Affection ☐ 10 Invasion of Privacy ☐ 18 Wrongful Death
☐ 03 Assault and Battery ☐ 11 Libel and Slander ☐ 19 Wrongful Eviction
☐ 04 Automobile ☐ 12 Malicious Interference ☐ 20 Other:
☐ 05 Deceit (Misrepresentation) ☐ 13 Malicious Prosecution ☐ 21 Asbestos
☐ 06 False Accusation ☐ 14 Malpractice Legal ☐ 22 Toxic/Mass Torts
☐ 07 False Arrest ☐ 15 Malpractice Medical
☐ 08 Fraud ☐ 16 Negligence

D. OTHERS

- | | | |
|---|--|---|
| <p>I.</p> <ul style="list-style-type: none">01 Accounting02 Att. Before Judgment04 Condemnation (Emin. Domain)05 Ejectment07 Insurance/Subrogation
Under \$25,000 Pltf.
Grants Consent08 Quiet Title09 Special Writ (Specify) | <ul style="list-style-type: none">10 T.R.O./Injunction11 Writ of Replevin12 Enforce Mechanics Lien16 Declaratory Judgment17 Merit Personnel Act (D.C.
Code Title 1, Chapter 6)18 Product Liability24 Application to Confirm, Modify,
Vacate Arbitration Award
(D.C. Code 164315) | <ul style="list-style-type: none">25 Other:26 Insurance/Subrogation
Under \$25,000 Consent Denied27 Insurance/Subrogation
Over \$25,000 |
| <p>II.</p> <ul style="list-style-type: none">03 Change of Name06 Foreign Judgment13 Correction of Birth Certificate14 Correction of Marriage
Certificate | <ul style="list-style-type: none">15 Libel of Information19 Enter Administrative Order as
Judgment [6-2713(h) or
36-3 19(a)]20 Master Meter (D.C. Code
43-541, et seq.) | <ul style="list-style-type: none">21 Petition for Subpoena
[Rule 28-1(b)]22 Release Mechanics Lien23 Rule 27 (a)(1)
(Perpetuate Testimony) |

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff,

v.

ELI LILLY AND COMPANY,
Lilly Corporation Center
Indianapolis, IN 46285
w/s/o NATIONAL REGISTERED AGENTS, INC.
1090 Vermont Avenue, N.W., Suite 910
Washington, DC 20005

Defendant.

CIVIL ACTION No.

CERTIFICATE UNDER LCvR 7.1

I, the undersigned, counsel of record for Defendant Eli Lilly and Company, certify that to the best of my knowledge and belief, the following are parent companies, subsidiaries, or affiliates of Eli Lilly and Company which have any outstanding securities in the hands of the public.

Lilly Del Mar, Inc., a British Virgin Islands Corporation

These representations are made in order that judges of this Court may determine the need for recusal.

Respectfully submitted,

ELI LILLY AND COMPANY

/s/ Lawrence H. Martin

Lawrence H. Martin, D.C. Bar No. 476639

Foley Hoag LLP

1875 K Street, NW, Suite 800

Washington, D.C. 20006-1238

(202) 223-1200

and

James J. Dillon

Foley Hoag LLP

World Trade Center West

155 Seaport Boulevard

Boston, MA 02210-2600

(617) 832-1000

Dated: March 3, 2004

CERTIFICATE OF SERVICE

I, Lawrence H. Martin certify that a true copy of the foregoing Certificate Under LCvR 7.1 was served on March 3, 2004 by U.S. First Class Mail, postage prepaid to:

Aaron M. Levine, Esq.
Aaron M. Levine and Associates, P.A.
1320 19th Street, NW, Suite 500
Washington, DC 20036
Attorney for Plaintiff

/s/ Lawrence H. Martin
Lawrence H. Martin

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON
68 Circuit Avenue
Weymouth, MA 02188

Plaintiff,

v.

ELI LILLY AND COMPANY,
Lilly Corporation Center
Indianapolis, IN 46285
w/s/o NATIONAL REGISTERED AGENTS, INC.
1090 Vermont Avenue, N.W., Suite 910
Washington, DC 20005

Defendant.

CIVIL ACTION No.

DEFENDANT ELI LILLY AND COMPANY'S
ANSWER TO THE COMPLAINT

Defendant Eli Lilly and Company ("Lilly"), by its undersigned attorneys, answers the Complaint filed in this action as follows:

FIRST DEFENSE

Answers to each paragraph of the Complaint by Lilly are made without waiving, but expressly reserving all rights that Lilly may have to seek relief by appropriate motions directed to the allegations of the Complaint.

1. Whether jurisdiction exists in this court pursuant to 11 D.C. Code § 921 is a legal question to which no response is required. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 1 of the Complaint.

2. Lilly states that it did sell and distribute diethylstilbestrol in the District of Columbia. Lilly responds that the term "DES" includes many drug products including but not limited to diethylstilbestrol, and any admissions in this Answer are intended to refer only to

diethylstilbestrol as it relates to Lilly. Lilly also states that it is doing business in the District of Columbia, that the U.S. Food and Drug Administration (“FDA”) is headquartered in the District of Columbia, and that the FDA approved Lilly’s sales of diethylstilbestrol and declared that the drug was generally recognized as safe by experts in the field for the uses at issue here. Except as already stated, Lilly denies the allegations contained in Paragraph 2 of the Complaint.

COUNT I
(Negligence)

3. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first two sentences of Paragraph 3. Lilly states that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol. Except as already stated, Lilly denies the allegations of Paragraph 3 of the Complaint.

4. Lilly denies the allegations contained in Paragraph 4 of the Complaint.

5. Lilly denies the allegations contained in Paragraph 5 of the Complaint.

COUNT II
(Strict Liability)

6. Lilly repeats and realleges its answers contained in Paragraphs 1 through 5 above.

7. Lilly denies the allegations contained in Paragraph 7 of the Complaint.

8. In response to the allegations contained in Paragraph 8, Lilly states that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol. Except as already stated, Lilly denies the allegations of Paragraph 8 of the Complaint.

9. Lilly is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9. To the extent a response is required, however, Lilly denies the allegations contained in Paragraph 9 of the Complaint.

10. Lilly denies the allegations contained in Paragraph 10 of the Complaint.

11. Lilly denies the allegations contained in Paragraph 11 of the Complaint.

12. Lilly denies the allegations contained in Paragraph 12 of the Complaint.

13. Lilly denies the allegations contained in Paragraph 13 of the Complaint.

COUNT III
(Breach of Warranty)

14. Lilly repeats and realleges its answers contained in Paragraphs 1 through 13 above.

15. Lilly denies the allegations contained in Paragraph 15 as stated, but admits that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol for treatment of certain accidents of pregnancy as referenced in its product literature.

16. Lilly denies the allegations contained in Paragraph 16 of the Complaint.

17. Lilly denies the allegations contained in Paragraph 17 of the Complaint.

18. Lilly denies the allegations contained in Paragraph 18 of the Complaint.

COUNT IV
(Misrepresentation)

19. Lilly repeats and realleges its answers contained in Paragraphs 1 through 18 above.

20. Lilly denies the allegations contained in Paragraph 20 as stated, but admits that following FDA approval of its Supplemental New Drug Application in 1947, Lilly manufactured and sold certain dosages of diethylstilbestrol for treatment of certain accidents of pregnancy as referenced in its product literature.

21. Lilly denies the allegations contained in Paragraph 21 of the Complaint..

22. Lilly denies the allegations contained in Paragraph 22 of the Complaint.

23. Lilly denies the allegations contained in Paragraph 23 of the Complaint.

COUNT V
(Punitive Damages)

24. Lilly denies the allegations contained in Paragraph 24 of the Complaint.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Lilly.

THIRD DEFENSE

The Plaintiff's Claims are barred by the applicable statute of limitations or laches.

FOURTH DEFENSE

If Plaintiff sustained injuries or incurred expenses as alleged, the risks complained of by Plaintiff were not discoverable using prevailing research and scientific techniques under the then-existing state of the art and were not discoverable using procedures required by federal and state regulatory authorities charged with supervision or licensing of the product as of the time Lilly sold or otherwise parted with possession and control of the product in question.

FIFTH DEFENSE

If Plaintiff sustained injuries or incurred expenses as alleged, Plaintiff's claims may be barred by virtue of the intervention of a learned intermediary or intermediaries to whom defendant discharged any duty to warn.

SIXTH DEFENSE

This court lacks personal jurisdiction over defendant.

SEVENTH DEFENSE

Venue is improper in this judicial district.

EIGHTH DEFENSE

Plaintiff's claims are barred and preempted by Eli Lilly and Company's compliance with the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq. and/or the regulations promulgated pursuant to that Act.

NINTH DEFENSE

Lilly hereby gives notice that it intends to rely upon other and further defenses as may become available or apparent during discovery proceedings in this case, and hereby reserves the right to amend its Answer to assert any such defense.

Respectfully submitted,

ELI LILLY AND COMPANY

/s/ Lawrence H. Martin
Lawrence H. Martin, D.C. Bar # 476639
Foley Hoag LLP
1875 K Street, NW, Suite 800
Washington, D.C. 20006-1238
(202) 223-1200

and

James J. Dillon
Foley Hoag LLP
World Trade Center West
155 Seaport Boulevard
Boston, MA 02210-2600
(617) 832-1000

Dated: March 3, 2004

CERTIFICATE OF SERVICE

I certify that on March 3, 2004, a true copy of Defendant Eli Lilly's Answer To The Complaint was served by U.S. First Class Mail, postage prepaid, upon:

Aaron M. Levine, Esq.
Aaron M. Levine & Associates, P.A.
1320 Nineteenth Street, N.W., Suite 500
Washington, DC 20036
Attorney for Plaintiff

/s/ Lawrence H. Martin
Lawrence H. Martin

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LISA SAMPSON,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

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Civil Action No. 04-0348 (JR)
Next Event:

NOTICE OF APPEARANCE

TO THE CLERK OF THE COURT AND ALL PARTIES OF RECORD:

Pursuant to LCvR 83.6, please enter the appearance of Aaron M. Levine, Brandon J. Levine, Renee L. Robinson-Meyer, and Steven J. Lewis of AARON M. LEVINE & ASSOCIATES as counsel for plaintiff LISA SAMPSON in the above-referenced matter.

Respectfully submitted,

AARON M. LEVINE & ASSOCIATES

/s/ Aaron M. Levine
AARON M. LEVINE, #7864
1320 19th Street, N.W., Suite 500
Washington, DC 20036
202-833-8040

/s/ Brandon J. Levine
BRANDON J. LEVINE, #412130

/s/ Renee L. Robinson-Meyer
RENEE L. ROBINSON-MEYER, #455375

/s/ Steven J. Lewis
STEVEN J. LEWIS, #472564

***UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA***

LISA SAMPSON

Plaintiff(s),

vs.

Civil Case No: **04-0348(JR)**

ELI LILLY AND COMPANY

Defendant(s).

NOTICE REGARDING SUPERIOR COURT FILE

The original file, certified copy of transfer order, and docket sheet have been received from the Superior Court for the District of Columbia. The Superior Court Case Number is **04ca0707**. The file is in paper form only and is being maintained in the Clerk's Office. These documents are available for public viewing between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

NANCY MAYER-WHITTINGTON

Clerk

Date: March 24, 2004

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Civil Division

LISA SAMPSON,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

Civil Action No.: 04-0348 (JR)

AFFIDAVIT OF SERVICE

I, BRANDON J. LEVINE, being duly sworn deposes and states:

1. That I am attorney of record for the Plaintiff, Lisa Sampson, in the above cause.
2. That on February 10, 2004, I personally caused to be mailed, certified mail, return receipt requested, the Complaint, Summons, and Initial Order to Eli Lilly and Company, Defendant in this action.
3. That on February 12, 2004, said Complaint, Summons, and Initial Order, was served on the Defendant, as shown by the return receipt, attached hereto.

I declare under the penalty of perjury that the foregoing is true and correct.

AARON M. LEVINE & ASSOCIATES

/s/ Brandon J. Levine

BRANDON J. LEVINE #412130

1320 19th Street, N.W. Suite 500
Washington, D.C. 20036
202/833 – 8040

Counsel for Plaintiff

SENDER: COMPLETE THIS SECTION 3-10

COMPLETE THIS SECTION ON DELIVERY

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece or on the front if space permits.

Article Addressed to:
FITZGILL AND COMPANY
 Lilly Corporate Center
 Indianapolis, IN 46285
 100 NATIONAL REGISTERED AGENTS, INC.
 1090 Vermont Avenue, N.W.
 Washington, DC 20005

Signature: *[Signature]*
 X ☒ Certified Mail ☐ Registered ☐ Insured Mail ☐ Restricted Delivery
 B Received by: *[Signature]* Printed Name: *[Signature]* Date of Delivery: *[Signature]*
 Is delivery address different from item 1? ☐ Yes ☒ No
 If YES, enter delivery address below:

Service Type:
☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ Signature Required
☐ Restricted Delivery ☐ Signature Required

Article Number:

7003 2260 0000 7626 4333

PS Form 3811, August 2001

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Jackie Riggs
 Aaron M. Levine & Associates
 1320 19th Street, N.W., Suite 500
 Washington, DC 20036

[Signature]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-0348 (JR)
	:	
ELI LILLY AND COMPANY,	:	
	:	
Defendant.	:	

ORDER

Upon a review of the docket in this case, it appears that nothing has been filed since defendant's answer (except for returns of service, entries of appearance, etc.). In lieu of an initial scheduling conference, it is

ORDERED that the parties file a status report with the Court no later than 30 days from the date of this order.

JAMES ROBERTSON
United States District Judge

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

LISA SAMPSON,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

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Civil Action No.: 04-0348 (JR)
Next Event:

JOINT MEET AND CONFER AND STATUS REPORT

Pursuant to this Court's December 22, 2004 Order, Local Rule 16.3 and Fed. R. Civ. P. 26(f), the attorneys for plaintiff and defendant conferred up to and including January 18, 2005, and hereby submit the following succinct statement of all agreements reached and positions taken by the parties on matters about which there was a disagreement:

TOPIC NO. 1: Whether the case is likely to be disposed of by dispositive motion; and whether, if a dispositive motion has already been filed, the parties should recommend to the Court that discovery or other matters should await a decision on the motion.

POSITION OF PARTIES: It is too early to evaluate the likelihood that Defendant will bring dispositive motions as the parties have not yet engaged in any substantial discovery.

TOPIC NO. 2: (a) The date by which any other parties shall be joined or the pleadings amended; and (b) whether some or all of the factual and legal issues can be agreed upon or narrowed.

POSITION OF PARTIES: (a) At the present time, none of the parties plan to join additional parties or amend the pleadings. The parties acknowledge that once discovery has begun, there may then be a need to join other parties or to amend the pleadings; (b) the parties agree that there are not yet any factual or legal issues that can be agreed upon or narrowed.

TOPIC NO. 3: Whether this case should be assigned to a magistrate judge for all purposes,

including trial.

POSITION OF PARTIES: Plaintiff consents to having the case assigned to a magistrate judge. Defendant does not consent to having the case assigned to a magistrate judge at this time.

TOPIC NO. 4: Whether there is a realistic possibility of settling the case.

POSITION OF PARTIES: While the parties are not aware of any information that would preclude a realistic possibility of settling the case, the parties also note that a prediction on the likelihood of settlement is somewhat premature as the parties have not yet engaged in any substantial discovery.

TOPIC NO. 5: Whether the case could benefit from the Court's alternative dispute resolution ("ADR") procedures or some other form of alternative dispute resolution, and, if so, which procedure should be used and whether discovery should be stayed or limited pending completion of ADR.

POSITION OF PARTIES: The parties propose to have this case referred to Magistrate Judge Alan Kay for mediation after the completion of discovery.

TOPIC NO. 6: Whether the case can be resolved by summary judgement or motion to dismiss; the dates for filing the dispositive motions and/or cross-motions, oppositions, and replies; and proposed dates for a decision of the motions.

POSITION OF PARTIES: Depending on the information that Defendant learns during discovery, Defendant may file motions for summary judgement or motions to dismiss. The parties have proposed various deadlines under Topic No. 8.

TOPIC NO. 7: Whether the parties should stipulate to dispense with the initial disclosures required by Rule 26(a)(1), Fed. R. Civ. P., and, if not, what, if any, changes should be made in the scope, form, or timing of those disclosures.

POSITION OF PARTIES: The parties agree and request the Court to dispose of the 26(a)(1) initial disclosures. The parties also agree that if plaintiff requests an extension of time to respond to defendant's discovery requests, plaintiff shall at least produce the following by the original

deadline for responding to the discovery requests: (a) all medical records in her possession (or the possession of her attorneys); (b) authorizations to obtain medical records; (c) the identity and address of all known medical providers who have treated plaintiff and/or her mother; (d) the identity and address of the pharmacy, physician and/or hospital dispensing the DES at issue in this lawsuit; and (e) all documents and/or tangible objects in the possession of plaintiff and/or her attorneys regarding the identity of the manufacturer of the DES at issue in this lawsuit.

Defendant agrees that, within a week of the time that defendant obtains any medical records (other than medical records received directly from plaintiff), defendant shall send a copy of all such medical records to plaintiff's counsel.

TOPIC NO. 8: The anticipated extent of discovery, how long discovery should take, what limits should be placed on discovery; whether a protective order is appropriate; and a date for the completion of all discovery, including answers to interrogatories, document production, requests for admissions, and depositions.

POSITION OF PARTIES: The parties agree that, pursuant to Fed. Rule 33, each party is limited to 25 interrogatories. The parties agree that the number of non-expert deposition should be limited to the following, whichever is greater: (a) 10 non-expert depositions or (b) the depositions of Plaintiff, any present or former husband of plaintiff, her mother, and her father, as well as the depositions of any relevant medical providers or pharmacists. The parties agree that the duration of each deposition shall be limited to one (1) day or seven (7) hours, whichever is greater.

The parties suggest the following schedule:

February 21, 2005: Deadline for serving discovery requests.

April 21, 2005: Deadline for plaintiff to designate experts and provide expert reports, pursuant to Rule 26(a)(2).

May 23, 2005: Deadline for defendant to designate experts and provide expert reports, pursuant to Rule 26(a)(2).

August 21, 2005: All Discovery Closed. The parties agree that experts may be deposed until the closed of discovery.

September 21, 2005: Deadline for filing Dispositive Motions.

November 2005: Pre-Trial Conference.

The parties' Proposed Scheduling Order attached hereto as Appendix No. 1.

TOPIC NO. 9: Whether the requirement of exchange of expert witness reports and information pursuant to Rule 26(a)(2), Fed. R. Civ. P., shall be modified and whether and when depositions of experts should occur.

POSITION OF PARTIES: The parties agree to make all expert witnesses available for deposition. Prior to the depositions, the parties agree to exchange expert reports pursuant to Rule 26(a)(2), except that the parties agree to dispense with the requirement of Rule 26(a)(2)(B) of a list of cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. However, the parties may inquire into the topic of prior cases at the time of the deposition.

TOPIC NO. 10: In class actions, appropriate procedures for dealing with Rule 23 proceedings, including the need for discovery and the timing thereof, dates for filing a Rule 23 motion, and opposition and reply, and for oral argument and/or an evidentiary hearing on the motion and a proposed date for decision.

POSITION OF PARTIES: Not applicable.

TOPIC NO. 11: Whether the trial and/or discovery should be bifurcated or managed in phases, and a specific proposal for such bifurcation.

POSITION OF PARTIES: The parties agree that it is too early to determine whether the trial of this case should be bifurcated or managed in phases.

TOPIC NO. 12: The date for the pretrial conference (understanding that a trial will take place 30 to 60 days thereafter).

POSITION OF PARTIES: The parties request a pretrial conference in November 2005.

TOPIC NO. 13: Whether the Court should set a firm trial date at the first scheduling conference or should provide that a trial date will be set at the pretrial conference from 30 to 60 days after that conference.

POSITION OF PARTIES: The plaintiff prefers that a firm trial date be set at the first scheduling conference. Defendant does not prefer that a firm trial date be set at the first scheduling conference.

TOPIC NO. 14: Such other matters that the parties believe may be appropriate for inclusion in a scheduling order.

POSITION OF PARTIES: The parties have no other matters that they believe need to be included in the scheduling order at this time.

STATEMENT OF THE CASE:

A. Plaintiffs:

This is a products liability/personal injury case arising from Plaintiff's in utero exposure to diethylstilbestrol ("DES"), a synthetic estrogen which was manufactured, marketed, sold, promoted and distributed by the Defendant in 1964-1965 to the plaintiff's mother for the purpose of preventing miscarriage.

Plaintiff claims that as a result of her in utero exposure to DES, she has suffered injuries, including but not limited to, a T-shaped uterus, with resultant poor pregnancy outcomes, infertility and concomitant medical and surgical expenses for care and treatment, and that the Defendant is liable for said injuries based on negligence, strict liability, breach of warranty, and misrepresentation.

B. Defendant's:

Defendant Eli Lilly and Company ("Lilly") generally denies that it is liable to the Plaintiff under any of the Plaintiff's causes of action. While discovery has not yet commenced, Lilly believes that the Plaintiff will be unable to come forward with evidence sufficient to meet her burden of persuasion that Plaintiff was exposed in utero to DES in the first place, that any such DES was manufactured or produced by Lilly, that any such DES caused the injuries of which the Plaintiff complains, and that Lilly breached any duties owed to the Plaintiff, breached any warranties, or made any material misrepresentations. Lilly has also asserted several affirmative defenses, including that the Plaintiff's claims may be barred by the applicable statute of limitations or laches, and by the learned intermediary doctrine.

STATUTORY BASIS FOR ALL CAUSES OF ACTION AND DEFENSES:

A. Plaintiffs:

The statutory basis for the Plaintiff's cause of action is 28 U.S.C. §1332(a) (diversity).

B. Defendant's:

Affirmative defenses asserted by the Defendant with a statutory basis are that the Plaintiff's claims may be barred by the statute of limitations and that the Plaintiff's claims may be barred and preempted by the Federal Food, Drug, and Cosmetic Act.

Respectfully submitted,

AARON M. LEVINE & ASSOCIATES

FOLEY HOAG LLP

/s/ Aaron M. Levine
AARON M. LEVINE, #7864
1320 19th Street, N.W.
Suite 500
Washington, DC 20036
202/833-8040

Counsel for Plaintiff

/s/ Lawrence H. Martin (by permission-rm)
LAWRENCE H. MARTIN, #476639
1875 K Street, N.W.
Suite 800
Washington, DC 20006
202-223-1200

and

James J. Dillon, Esq.
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210-2600
617/832-1000

Counsel for Defendant Eli Lilly and
Company

Dated: January 18, 2005

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-0348 (JR)
	:	
ELI LILLY AND COMPANY,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

The parties' joint meet and confer and status report is **approved** and the dates set forth in their proposed scheduling order are **approved and so ordered**. The final pretrial conference is set for **November 3, 2005 at 4:30 p.m.** and trial is set for **November 14, 2005, at 9:30 a.m.** It is

FURTHER ORDERED that any discovery disputes be presented, in the first instance, by telephone conference with the Court, and not by motion. And it is

FURTHER ORDERED that extensions of time to file dispositive motions or status reports or to complete discovery will be granted as a matter of course if all parties consent and if the extensions will not require re-setting any scheduled court appearance (status conference, motion hearing, pretrial conference, trial). Do not file a motion for such a consented extension. Instead, make the request informally by letter, or by e-mail (addressed to RobertsonJ_Chambers@dcd.uscourts.gov), or by

fax (202-354-3468). Do not recite reasons. The Court's action granting a consented extension will be endorsed on the request and returned to the party requesting it. That party will be responsible for providing appropriate notice or service to all other parties. Neither the request nor the action granting it will be part of the record unless a party seeks leave to file it.

Counsel are strongly cautioned that no additional notice will be given of the appearance date(s) set forth in this scheduling order.

JAMES ROBERTSON
United States District Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

LISA SAMPSON,

Plaintiff,

v.

ELI LILLY AND COMPANY,

Defendant.

CIVIL ACTION No. 04-CV-0348 (JR)

**CONSENT MOTION OF ELI LILLY AND COMPANY
TO TRANSFER ACTION TO THE DISTRICT OF MASSACHUSETTS**

Defendant Eli Lilly and Company (“Lilly”) hereby moves to transfer this action, pursuant to 28 U.S.C. § 1404(a), to the District of Massachusetts. Plaintiff and Defendant consent to the relief requested in this motion.

1. Lilly bases its motion on the fact that the District of Massachusetts is a more convenient forum than the District of Columbia, the action could have originally been brought in the District of Massachusetts, and transfer out of a district with no connection to the Plaintiff’s claims is in the best interests of justice. *See* 28 U.S.C. § 1404(a) (permitting transfer to a district or division where the case could have been brought in the first instance); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 253 (1981) (noting that the district court enjoys wide discretion in deciding whether to transfer an action to a more convenient forum).

2. The District of Massachusetts is more convenient for the witnesses likely to be deposed or called to testify at trial. Section 1404(a) instructs the district court to consider the convenience of witnesses in deciding whether to transfer an action. *See* 28 U.S.C. § 1404(a). Lilly has reason to believe that virtually all of the potential fact witnesses and other sources of

proof are located in the District of Massachusetts. In particular, Plaintiff Lisa Sampson resides in Weymouth, Massachusetts. Plaintiff's mother, Diane Cody, and father, William Cody, Jr., reside in Weymouth, Massachusetts. The physician that allegedly prescribed DES to Plaintiff's mother, Dr. T.J. Slomkowski is located in Quincy, Massachusetts. The pharmacy that allegedly dispensed DES to Plaintiff's mother, Lizben Pharmacy, is located in Weymouth, Massachusetts. Plaintiff's mother was living in Weymouth, Massachusetts when she allegedly purchased and ingested DES, meaning the place of alleged exposure was within the District of Massachusetts. All of Plaintiff's identified treating physicians are located in the District of Massachusetts: Dr. Lisa Antonelli, Quincy, Massachusetts; Dr. Martha Ehrmann, Weymouth, Massachusetts; Dr. Merle Berger, Brookline, Massachusetts; and Dr. Achilles Athanassiou, Weymouth, Massachusetts.

3. Further, this action originally "might have been brought" in the District of Massachusetts. *See* 28 U.S.C. § 1404(a). First, the District of Massachusetts has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 since there is complete diversity of citizenship.¹ Defendant Eli Lilly and Company is incorporated and has its principal place of business in Indiana. Plaintiff resides in and is presumably domiciled in Massachusetts. Second, Massachusetts' long-arm statute reaches torts the consequences of which occur within the state. *See* Mass. Gen. Laws ch. 223A, § 3. Thus, the District of Massachusetts is at least as appropriate a forum as the District of Columbia with respect to subject matter and personal jurisdiction. Third, venue is proper in the District of Massachusetts because Plaintiff's relevant alleged injuries were diagnosed and treated in Massachusetts; she further alleges that the DES her

¹ Lilly does not contest the amount in controversy requirement since it does not appear to a legal certainty that Plaintiff cannot recover more than \$75,000. However, Lilly does not concede that the value of Plaintiff's claims in fact exceeds that minimum requirement.

mother ingested was prescribed, dispensed, and ingested in Massachusetts. *See* 28 U.S.C. § 1391(a)(2) (allowing transfer to “a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”).

4. Finally, the interests of justice support transfer of this action to the District of Massachusetts. *See Pain v. United Technologies Corp.*, 637 F.2d 775, 782 (D.C. Cir. 1980) (listing public interest factors to consider). The District of Massachusetts has a strong interest in seeing that the product liability claims of Massachusetts citizens are tried fairly and efficiently. The applicable law favors the District of Massachusetts because that court is more familiar with the substantive law of the state in which it sits than is the District of Columbia. *See Moore v. Ronald Hsu Constr. Co.*, 576 A.2d 734, 737 (D.C. 1990) (noting that the District of Columbia’s choice of law rules point to the jurisdiction with the “most significant relationship” to the dispute). Finally, this case has no connection to the District of Columbia except that it was filed here: no witnesses reside here, Plaintiff’s alleged exposure to DES did not occur here, and none of Plaintiff’s injuries were diagnosed or treated here. Because this case has no connection to this district and because all parties consent to transfer, it is equitable to transfer this case out of the District of Columbia.

CONCLUSION

WHEREFORE, based on the foregoing reasons, Lilly respectfully requests that this Court grant its consent motion to transfer this case to the District of Massachusetts.

Respectfully submitted

ELI LILLY AND COMPANY,

By its attorneys,

/s/ James J. Dillon

James J. Dillon, D.C. Bar No. 485593
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02110-2600
(617) 832-1000

-and-

Lawrence H. Martin, D.C. Bar No. 476639
FOLEY HOAG LLP
Suite 1200
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 223-1200

Dated: May 2, 2005

LOCAL RULE 7.1(M) CERTIFICATION

Pursuant to Local Rule 7.1(m), Defendant Eli Lilly and Company certifies that, through its counsel, it conferred with counsel for Plaintiff and Defendant to determine whether they opposed the relief requested in this motion. Counsel for all parties consented to the relief requested in this motion.

/s/ James D. Dillon

James J. Dillon

Filename: FHBOSTON-#3028096-v2-
Motion_to_Transfer_Sampson.DOC
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Keywords:
Comments:
Creation Date: 5/2/2005 9:39 AM
Change Number: 4
Last Saved On: 5/2/2005 10:03 AM
Last Saved By: Lauren Dwyer
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Number of Pages: 4
Number of Words: 859 (approx.)
Number of Characters: 4,902 (approx.)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LISA SAMPSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-0348 (JR)
	:	
ELI LILLY AND COMPANY,	:	
	:	
Defendant.	:	

ORDER

Pursuant to 28 USC § 1404(a), it is **ORDERED** that this case be transferred to the District of Massachusetts. Because this transfer is by consent, there is no reason to delay it, and the transfer shall be done forthwith.

JAMES ROBERTSON
United States District Judge